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HUMAN RIGHTS COMMITTEE

Forty-seventh session

SUMMARY RECORD OF THE 1218th MEETING

Held at Headquarters, New York,
on Tuesday, 30 March 1993, at 10 a.m.

Chairman: Mr. ANDO

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The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Third periodic report of Uruguay (continued) (CCPR/C/64/Add.4)

At the invitation of the Chairman, Mr. Jauregui (Uruguay) took a place at the Committee table.

1. The CHAIRMAN invited Mr. Jauregui to answer questions held over from sections II and III of the list of issues.

2. Mr. JAUREGUI (Uruguay), commenting on the remarks made by Mr. Bruno Celli at the previous meeting, said that there was no law to prevent anybody from demanding just compensation for a crime committed against them. In fact, persons whose human rights had been violated had brought action before Uruguayan courts and had been awarded damages. The correct figure for the number of people who had disappeared was 31 not 600.

3. In reply to Mr. Pocar's question concerning who decided which cases were covered by the Statute of Limitations Act, he said that it was the Executive. The Act stipulated, among other things, that the investigating judge should request that the Executive inform it within 30 days whether the matter under investigation was covered under article 1 of the law. If it was, the case was closed. If no reply was received, or if the reply was not clear, the investigation proceeded.

4. Concerning the questions put by Mr. Lallah and Miss Evatt he noted that there were two types of pre-trial detention: pre-trial detention in custody, which had already been commented on, and pre-trial detention in prison. Whichever type of detention was involved, the investigating judge's decision could always be appealed, either before the same judge or before an appeals court. Moreover, the State provided legal assistance free of charge to all those arrested or accused of crimes. He agreed that the heading "Annual prison visits by members of the Supreme Court of Justice" preceding paragraph 72 of the report should be deleted.

5. In answer to Mr. Sadi he said that the Government was doing its utmost to avoid cases of torture and ensure respect for the full rights of persons undergoing interrogation. Special courses were being organized for people working in the prisons in line with United Nations recommendations. As it was a problem of long-term education to be initiated from the primary level and continued up to the university level, his Government had provided along with the third report, a dossier on the programme being implemented in primary schools to impart the basics of human rights to pupils. That policy had been extended to the university level where a chair on human rights had been established.

6. Regarding violence against women, unfortunately, there had indeed been such cases. In his country, there were very prestigious private and public organizations that defended and supported the rights of women. A special police station staffed entirely by women had been established to receive and

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investigate reports of maltreatment and abuses of women. There were also prisons for and run by women. His Government would provide the Committee with a table giving the total prison population figures broken down by gender for the years 1990 and 1991.

7. Whereas judges of the Supreme Court could not serve for more than 10 years and could not be re-elected until five years had elapsed after the end of that tenure, the only limit on the tenure of other judges other than satisfactory performance was that Article 250 of the Constitution set the retirement age for all judges at 70 years. The majority of judges in Uruguay were women, especially in areas that dealt with family matters and minors. For instance in Montevideo, 27 out of the 29 family court judges were women.

8. He could easily allay Mr. Francis' concern with respect to the independence or impartiality of the judicial system. In Uruguay, the Supreme Court judges were proposed by the General Assembly, Appeal Court judges were proposed by the Supreme Court and their appointment required the approval of the Senate. All other judges were directly appointed by the Supreme Court. The mechanism of designating judges by the General Assembly did not threaten the independence of the judiciary. Although Supreme Court judges originally had ties with the General Assembly, such ties in no way had a bearing on their independence or impartiality in the performance of their duties.

Freedom of movement and expulsion of aliens, right to privacy, freedom of religion, expression, assembly and association, right to participation in the conduct of public affairs, and rights of persons belonging to minorities (articles 12, 13, 17, 18, 19, 20, 21, 22, 25 and 27 of the Covenant) (section IV of the list of issues)

9. The CHAIRMAN read out section IV of the list of issues concerning the third periodic report of Uruguay, namely: (a) the extent to which the Roman Catholic Church enjoyed privileged treatment as compared with other churches or religious groups; (b) information on any restrictions which might be placed on the exercise of the right to freedom of expression and information "within the limits of the Constitution and the law"; (c) details on the compatibility of act No. 16,099 of 24 October 1989 with article 19, paragraph 2, of the Covenant, especially in relation to the freedom to seek, receive and impart information; (d) clarification of administrative requirements that needed to be met by heads of news agencies, printers and editors "vis-à-vis the Ministry of Education and Culture"; (e) explanation of the procedure described in paragraph 91 of the report relating to the exercise of the right of reply; (f) information on the enactment of any legislation governing the registration of trade unions and the right to strike following accession to the ILO Conventions mentioned in paragraph 103 of the report; (g) comments on any factors or difficulties hampering the implementation and enjoyment of the rights set out in article 27 of the Covenant; (h) the number of members of minority groups who were members of parliament.

10. Mr. PRADO VALLEJO noting that, under the Press Act, instigation to defamation or slander was a punishable offence said that in his country, the Congress was constantly being criticized for its poor performance. He wondered

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whether the representative of Uruguay considered that a crime and whether considering criticism a crime would not be a limitation of freedom of expression.

11. Mr. JAUREGUI (Uruguay) said that no church in Uruguay enjoyed privileged treatment as compared with other churches and that, under the second Constitution, church and State had been separated. Turning to section IV (b) of the list of issues, and the question put by Mr. Prado Vallejo, he noted that article 29 of the Constitution guaranteed total freedom of expression on any subject by any method of dissemination without prior censorship, but also stated that the authors would be held liable for any abuses they should commit. While reiterating the provisions of article 29 and establishing the journalists' rights to professional secrecy, Act No. 16,099 established in article 19 that deliberate dissemination of inaccurate information which seriously disrupted public order or severely damaged the economic interests of the state or harmed its credit abroad and instigation to slandering of the nation, State or its powers were punishable offences. To the extent that such crimes could be defined after the facts and dealt with by an independent judge, it should not be considered that there were any limitations on the freedom of the press.

12. In relation to section IV (c) of the list of issues, Act No. 16,099 was entirely in keeping with article 19, paragraph 2 of the Covenant and even used some of the same wording as the Covenant. In that connection, he referred to paragraphs 87 and 88 of the third periodic report. Article 32 of the Press Act stated that foreign publications could be freely circulated throughout the country and that when offences were committed as a result of such foreign publications, the rules governing the writ of amparo would apply.

13. Regarding section IV (d) of the list of issues, heads of news agencies and printers and editors of publications were required to file, prior to the start of publication, a sworn statement giving the name and address of the publication in question, of the owner and of the printing press. He was providing a copy of the requisite form to the Committee. That purely administrative requirement in no way affected the operation of the publication, but did provide a safeguard for any individual who might wish to sue the publication for libel.

14. With regard to section IV (e), the right of reply (paras. 90-92 of the report) was a very smooth and rapid procedure: the competent judge must call a hearing within 24 hours of receiving a written application for the right to reply publicly to published information injurious to the applicant. If the representative of the publication or the media did not appear, the judge must order immediate publication of the reply; if the applicant did not appear, he would lose his right ever to exercise a similar right of reply; if both attended the hearing, the judge would normally make an immediate ruling, although he could take up to three days if more time or more evidence were required. The judge could either grant the request in which case the reply would be published as indicated in paragraph 92 of the report or reject it; in either case the judgement could be appealed to a criminal court of the second instance, which had 10 working days to reach a final decision. A copy of a recent judgement was being made available; it would interest the Committee particularly because of the view that both the right to express opinions and the right to reply were inherent human rights, neither having precedence over the other.

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15. As concerned section IV (f) of the list of issues, no legislation other than that referred to in paragraph 103 of the report had been enacted, but the right to strike, recognized in article 57 of the Constitution, was legally in force as a result of Uruguay's ratification of the International Labour Organisation Conventions in question.

16. As to the implementation of article 27 of the Covenant addressed in section IV (g) of the list of issues, he had to say in all honesty that no ethnic minorities in Uruguay were denied any of their rights, given the guarantees in articles 8 and 5, 29 and 38 of the Constitution. People of all colours and races could rise to any station in society, and any difficulties of access or opportunity they might encounter did not reflect the natural Uruguayan way but arose along social rather than ethnic lines.

17. Regarding the representation of minorities in Parliament, under section IV (h) of the list, minority groups were fully integrated into the various political parties, which were the sole avenue to public office. The Senate, for instance, had 30 members, one of whom was a woman, while the Chamber of Deputies had 99 members, 6 of them women. He would provide the Committee with figures on the number of women who had run for elective office, but could assure it that women played a very dynamic role in Uruguayan politics. There had recently been proponents of setting legal minimum quotas for women serving in Government, but he himself had opposed such an approach as discriminatory against men and as an artificial solution.

18. Mr. SADI, commending the representative of Uruguay for his informative replies to earlier questions, asked how the legal separation of Church and State worked in practice, since the majority of Uruguayans were Roman Catholics. He wondered whether non-Roman Catholics stood much chance of being elected to public office or appointed to Judiciary or the Cabinet. On the question of press freedom, he would like to know whether there were any government-controlled newspapers or television channels; and also what limitations could be placed on the journalists' right to professional secrecy.

19. He found it surprising that the representative of Uruguay had discussed the situation of women in relation to minority groups. On that general question, it would be interesting to know if the Government sought to promote multiculturalism or the melting-pot approach, which was often more successful in practice.

20. Mrs. HIGGINS agreed that women were not ordinarily considered a minority, which under article 27 of the Covenant meant an ethnic, religious or linguistic minority. On that question, she would have liked to know, for instance, whether any non-Catholics had, through the party route as indicated, become members of Parliament and whether there were any problems impeding ethnic or racial groups from continuing to enjoy their own culture and language. She hoped that future reports would include a section on article 27 of the Covenant.

21. She observed that the Penal Code provisions governing offences by the media and the press (para. 94 of the report) sat rather uncomfortably in a liberal democracy and used terminology reminiscent of the old Eastern European countries

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("abuse of the Nation", "harm to the economic interest of the State"). The Uruguayan Government should consider changing the old law inherited from the de facto regime, and remove such qualifications of press freedom, which were not compatible with article 19 of the Covenant. Similarly, it was surprising that slander should carry a custodial sentence (para. 95) since it was normally an offence punishable by fine or reparations.

22. Mr. AGUILAR asked whether a journalist had to be a member of a professional association in order to enjoy the right to professional secrecy (para. 88 of the report). He would also like to know why the name of the printing press of a publication needed to be registered. He supported Mrs. Higgins' comments regarding paragraph 94 and the limitations on press freedom. Lastly, he would like clarification as to whether the failure to vote was a punishable offence and, if so, how that accorded with freedom of conscience.

23. Mr. WENNERGREN asked for information on the extent to which the Press Act permitted investigative journalism - in government archives, for instance - in the name of the right to seek information, which was one of the rights guaranteed under article 19, paragraph 2 of the Covenant.

24. Mr. NDIAYE, noting that the representative of Uruguay's interpretation of the term "minorities" was different from that given in article 27. He wondered whether there were any real minorities in Uruguay and, if so, whether they were free to practise their own religions and speak their language. He would also like more information on the proposed affirmative action legislation for minorities to which the Uruguayan representative said that he himself objected.

25. Mr. PRADO VALLEJO asked for clarification of the provisions of the Press Act cited in paragraph 94 of the report, since criticism of one's Government was a very common phenomenon. Also, the Penal Code provision punishing those who preached disobedience of the law could be a violation of freedom of expression in the case of those who argued against an unjust or unconstitutional law.

26. Miss EVATT, observing that the third periodic report said nothing about article 13 of the Covenant, said that she would like an account of Uruguayan law and policy on persons claiming refugee status on the grounds of fear of persecution. With regard to article 19 of the Covenant, she wondered if it was an offence to publish without registering as required (para. 89 of the report), and what penalty that carried.

27. She asked whether the Bill of Rights for Trade Unions referred to in the second periodic report had been adopted yet. Under article 27 of the Covenant, it would be useful to know whether there were any indigenous people in Uruguay and what their status was.

28. Mr. JAUREGUI (Uruguay) said that there was complete separation of Church and State, and religion or ethnicity had no bearing on accession to Parliament, except to the extent that they might be a condition of membership in a political party. There was no government-controlled press, and only one Government television channel, which carried cultural programming. All ethnic groups had the right to the full enjoyment of their own culture and language. Any church

or other religious group had complete freedom to function without the slightest interference, as long as it did not attack the foundations of society.

29. Several members had expressed concern regarding possible limitations on journalists' right to professional secrecy. Disclosure of sources by journalists was optional. If a newspaper editor was called to testify in a court case regarding slander, for example, and the right to professional secrecy was invoked, the door was closed to further inquiry about sources. No limitations were imposed on entry into the profession, and journalists were not required to be members of any professional organization. The obligations to the Ministry of Education and Culture mentioned in paragraph 89 simply involved administrative procedures allowing the determination of responsibility. The printers of publications were required to register solely as a precautionary measure. Since no prior restrictions had been placed on freedom of the press, legal action to halt the publication of material found to be in violation of the law would be impossible without the ability to identify the printer. The Act in no way limited the right to criticize the Government.

30. Mr. Aguilar had felt that there could be conflict between the constitutional obligation to vote in elections and the Covenant. There was no obligation to vote for a particular candidate, however, and a blank ballot could be returned if desired. The Government held the philosophy that all citizens had the duty to participate in the Government and its institutions. The only punishment for failure to comply was a small fine.

31. In response to Mr. Wennergren, the right to seek information went hand in hand with the right to disseminate it, and both were considered an integral part of freedom of information. To clarify the concept of compensatory discrimination, actions which were objectively discriminatory would not be prohibited if their intent was to redress a previous inequality. For example, the targeted recruitment of women to increase their numbers in certain fields was objectively discriminatory, but since it compensated for previous discrimination, it was not treated as such.

32. In answer to Miss Evatt, an unregistered newspaper could not publish, since that would violate article 4 of the Act. The new labour law mentioned during submission of the second periodic report had not yet been drafted. No indigenous people or racial minorities were found in Uruguay; its population was entirely composed of the descendants of immigrants.

33. Mr. PRADO VALLEJO said that the present situation with regard to human rights and the rule of law in Uruguay was commendable. His only concern was the Statutory Limitations Act, which represented a step backwards from the human rights standpoint; it was unacceptable for a State to renounce its duty to investigate reports of human rights violations. By prohibiting the investigation of abuses the Act impeded the exercise by the individual of his right to effective recourse, one of the most basic human rights. Payment of compensation by the civilian Government to the victims of the military dictatorship was a positive step, however.

34. Miss CHANET said that she understood the difficulty, after only a few years of civilian Government, of ridding the country of all the political debris from the dictatorship, and she hoped that the delegation would take the Committee's comments as an encouragement on that path.

35. The Statutory Limitations Act reflected the sovereign will of the Uruguayan people, which must be respected, but it had both direct and indirect negative effects leading to violations of the Covenant. Because of the failure to investigate, victims of abuse faced a virtual obstacle course in their attempts to seek effective recourse. Since no information on available recourse had been provided, she was forced to assume that none existed. If that was so, the obligations under article 2 of the Covenant were not being fully observed. Compared to the scale of the abuse which had taken place under the former Government, the number of cases of reparations - 34 - was very small.

36. While torture was not systematically practised, there were many reports of maltreatment in police stations. Moreover, the length of the pre-trial detention period was not in conformity with article 9. In current practice, it appeared that detention was the rule and freedom the exception, in direct opposition to the provisions of the Covenant, including the presumption of innocence in article 14.

37. In order to break completely with the past, she recommended the punishment of current cases of torture and the monitoring of police and all others with authority over individuals. Establishment of an independent and impartial authority to hear complaints would represent progress. The firearms law must be amended to conform with Basic Principles on the Use of Force and Firearms by Law Enforcement Officials allowing their use only in cases of self-defence. The laws regulating freedom of expression were worded in such a general way as to allow prosecution of persons criticizing the Government. One solution would be to draft specific legislation prohibiting incitement to class or racial hatred. Stricter legislation in that specific area would help to prevent possible abuses.

38. Mr. FODOR suggested that any questions raised by the Committee which had not been answered during the dialogue with the delegation could be answered in the next periodic report. While appreciating the right of a sovereign State to pass such legislation as the Statutory Limitations Act which had been approved by a national referendum - in the interests of national reconciliation, he could not see how it could be reconciled with the right of victims to compensation and recourse. He welcomed the news that some victims had received compensation, but stressed that all victims of abuse deserved to be compensated.

39. In the next report, he would like to learn more about the de facto barriers of women and Blacks in politics and employment. The abuse of detainees by the police should be investigated more rapidly and the perpetrators tried and convicted. Prison conditions must be improved, and the lack of recreational facilities and training programmes should be remedied. He hoped that the next report would mention progress made with regard to special measures to promote the rights of minorities.

40. Mr. WENNERGREN said that he had not contributed to the discussion on the Statutory Limitations Act because the opinions he had expressed on that issue

during the Committee's consideration of Uruguay's second periodic report remained valid.

41. In addition, he still had concerns regarding the interpretation in Uruguay of habeas corpus and amparo. Other members had drawn attention to inconsistencies between the rules governing detention and the provisions of article 9 of the Covenant; the delegation's comments on habeas corpus and amparo had been confusing and it remained unclear what kind of remedies they provided. He suggested that, when the detention system in Uruguay was revised, efforts should be made to streamline the procedures of habeas corpus and amparo, thereby making it easier for the population to understand and apply the remedies thus provided.

42. While assurances had been given of guarantees for the freedom of information and expression, it was also important to safeguard the freedom to seek information, in accordance with the provisions of article 19, he was not convinced that that aspect was adequately protected by the 1989 Act.

43. Mr. EL-SHAFEI said that while great progress had been made in Uruguay towards the restoration of democracy and respect for human rights, he shared the concerns expressed however by the other members of the Committee concerning the Statutory Limitations Act, which deprived victims of torture and other violations of their rightful remedies and was incompatible with article 2 of the Covenant. The number of cases which had come before the courts was small compared to the total number of cases and he hoped that the Committee's concerns would be conveyed to the Government of Uruguay.

44. With reference to derogation from obligations under the Covenant, he felt that the explanations offered by the delegation concerning existing guarantees of the provisions of article 4 of the Covenant were not convincing. Finally, he hoped that the authorities would heed the Committee's final decisions and views on communications.

45. Mrs. HIGGINS said that she had been greatly encouraged by the dialogue and by the high-level representation provided by the Government. In addition, Uruguay was to be complimented on being up-to-date with its reports, on having accepted the International Fact-Finding Commission and having acceded to the Optional Protocol. The delegation's answers on the question of national minorities had fully met her concerns in that area.

46. With regard to the troublesome issue of the Statutory Limitations Act, she accepted that the legislation in question was not a self-serving amnesty, like those adopted in many other countries, but an expression of the sovereign will of the people. Nevertheless, the human rights safeguards of the Covenant could not be set aside under any circumstances and the concerns of the minority constituted by victims of violations must be attended to. She was not convinced that the existing arrangements for providing information to the families of victims, securing appropriate remedies and ensuring that there would be no repetition of such violations were adequate.

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47. She was concerned by the delegation's reply, relating to the question of follow-up, that compensation could not be granted on an automatic basis but must be applied for. As a result, an author was forced once again to enter into contentious proceedings in order to establish an entitlement which should be granted automatically. Finally she was concerned that, because the Government had returned to de facto law, it had presumed that all was well and no further action was required. In some areas, however, the legislation which had preceded de facto law had been inconsistent with the Covenant, particularly the provisions of articles 4 and 19. The manner in which legislation on bail and detention was formulated militated against the presumption of innocence established by the Covenant. She suggested, consequently, that in its subsequent report the Government should answer carefully, paying closest attention to those areas which had caused particular concern to the Committee; should check all its laws against the provisions of the Covenant, using its dialogue with the Committee as a guide; and should conduct a review of the handling of remedies, in relation to the case law of the country.

48. Mr. SADI, congratulated Uruguay on having entered a new era of democracy and respect for human rights, and said that the only issue tarnishing its good image in that area was the adoption of the Statutory Limitations Act. Since it appeared unlikely that the Act would be repealed, efforts should be made to amend it so as to contain its negative implications and increase the effectiveness of its remedies, not only in the area of restitution and compensation but also by limiting the civil rights of the perpetrators; that would necessitate the conduct of investigations.

49. Mr. POCAR said that it was clear that there had been considerable progress in the area of human rights protection in Uruguay over recent years. Certain doubts persisted, however, in particular with regard to the effect of the Statutory Limitations Act on the exercise of human rights. He wondered what criteria were followed by the Executive Power in determining the political grounds of actions considered under the Act and how many of the 34 cases that had been considered were covered by the provisions of the Act. It was doubtful whether victims of violations covered by the Statutory Limitations Act would have recourse to effective remedies.

50. Mr. AGUILAR said that the dialogue with the delegation had been very productive, evidencing encouraging progress by the leadership of Uruguay in promoting national awareness of democracy and respect for human rights. He remained concerned, by certain issues, and noted, in particular, that the Statutory Limitations Act was not consistent with the provisions of article 2, paragraph 2 of the Covenant, as it removed the possibility of punishment for those guilty of abhorrent crimes and prevented victims from gaining true reparation, especially moral restitution. Some cases brought to the Committee's attention appeared to involve violation of the provisions of the Covenant and could hardly be covered by the Statutory Limitations Act since the violations in question could not have been committed by officials acting in the exercise of their duties or on orders from superiors. In general, the Act, both in its spirit and in its application, was contrary to the provisions of the Covenant and he urged the State party to take appropriate measures.

51. Noting that the coup d'état in Uruguay in 1973 had been effected in accordance with the provisions of the constitution in force at that time, he stressed the need to enact the necessary constitutional safeguards to prevent any repetition of such a massive violation.

52. In conclusion, he drew attention to certain inconsistencies in the provisions of the Constitution protecting freedom of the press and recommended that those provisions be brought more exactly in line with the Covenant.

53. The CHAIRMAN said that the Committee had been very pleased with the response from the Government of Uruguay and the positive developments in the area of human rights protection in that country.

54. With regard to the problems caused by the Statutory Limitations Act, he noted that, while it was impossible to eradicate the past, maximum efforts should be made to remedy past abuses and violations. Uruguay was making such efforts and he hoped that the Committee's comments would prove helpful. Sporadic instances of police abuse and maltreatment of detainees should be investigated, the perpetrators adequately punished and appropriate training provided for the police and armed forces. While it was clear that the legislation of Uruguay did not condone racial discrimination, the practice did exist and some sort of affirmative action might be required. By and large, the situation regarding the freedom of expression appeared to be satisfactory and the fact that the Committee had received many communications from Uruguay during the military dictatorship was evidence of broad awareness of the Covenant and its provisions in that country.

55. Mr. JAUREGUI (Uruguay) assured the Committee that those questions which he had been unable to answer would be taken up by the appropriate authorities. He described various measures undertaken in Uruguay to further the protection of human rights, in particular the establishment of a National Council on Human Rights, responsible for the study and dissemination of information on human rights. While Uruguay still had a considerable distance to go before it achieved full recognition of the dignity of human beings and respect for human rights, his Government would make every effort to implement and improve all domestic instruments aimed at full respect for human rights and looked forward to future cooperation with the Committee.

The meeting rose at 1 p.m.